

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SANDPIPER CONDOMINIUM COUNCIL)	CASE NO: 2:18-CV-00414
OF OWNERS, INC,)	
)	CIVIL
Plaintiff,)	
)	Corpus Christi, Texas
vs.)	
)	Wednesday, October 23, 2019
LEXINGTON INSURANCE COMPANY,)	
)	(3:16 p.m. to 4:33 p.m.)
<u>Defendant.</u>)	

MOTIONS HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Court Recorder [ECRO]: Genay Rogan

Clerk: Brandy Cortez

Court Security Officer: Brad Standlee

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APPEARANCES:

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For Defendant:

JAMES M. DENNIS, ESQ.
Mound Cotton, et al.
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Corpus Christi, Texas; Wednesday, October 23, 2019; 3:16 p.m.

(Call to Order)

THE COURT: So 2:18-CV-414, *Sandpiper Condominium Council of Owners versus Lexington Insurance Company*.

The Plaintiff will announce.

MR. CHRISS: William J. Chriss, Greg Turman and Kathryn Snapka for Sandpiper.

THE COURT: And then the Defense.

MR. DENNIS: James M. Dennis, Mound Cotton Wollan & Greengrass, for Lexington Insurance Company.

THE COURT: Okay. So there's some discovery matters that have been pending for a little while and we set those and then I think there's a couple other matters we could probably address also. So I have the pending that we can address first and probably together. It's the Plaintiff's motion for protection from discovery and to modify or quash the subpoenas issued to the individuals and then Sandpiper had filed -- wait, I'm sorry -- and then Lexington had filed a motion to compel production of the documents, the post-March 8th documents.

So some of those have related issues we can address together and then we can work through each one after that. How do you-all want to do this? I have reviewed this. I have some thoughts. I can let you know what my thoughts are and then let you-all argue more. That way we can streamline where we are. Or how do you want to proceed?

1 **MR. CHRISS:** That would be fine with me, Judge,
2 whatever is the most efficient way to proceed and whatever is
3 going to be most helpful to the Court.

4 I should probably say as a preliminary matter, since
5 the Court asked whether or not the case has been resolved, that
6 we have demanded appraisal in the case which I think will
7 result in the Court abating the proceedings at some point once
8 we get an umpire appointed.

9 **THE COURT:** Okay.

10 **MR. CHRISS:** And so I just wanted to let the Court
11 know that. I didn't want to misrepresent anything.

12 **THE COURT:** Okay. Do you want to say anything on
13 that, Mr. Dennis?

14 **MR. DENNIS:** Yes, your Honor. Not to get too far
15 ahead of ourselves, Lexington is going to oppose a motion to
16 abate and will also oppose appraisal.

17 **THE COURT:** Okay. Has the motion for appraisal --
18 that hasn't been filed?

19 **MR. CHRISS:** No, Judge --

20 **THE COURT:** Okay.

21 **MR. CHRISS:** -- because I was waiting to hear if they
22 were going to oppose referring the matter to appraisal. Now
23 that I know that, we will be filing a motion to compel
24 appraisal and abatement, yes.

25 **THE COURT:** Okay. So I'll wait on that.

1 **MR. DENNIS:** Here it is -- this case has now been
2 pending for almost a year. We have gone through a lot of
3 discovery, taken four depositions. We have another one
4 scheduled for next week. The Plaintiffs apparently feel that
5 it's time to abate the case to go and spend whatever months now
6 we're going to do on appraisal which, as I indicated, we would
7 oppose.

8 I have a suggestion, your Honor, in the alternate, is
9 instead of abating this case and spending months going off on
10 some appraisal, which won't dissolve the issues and is
11 inappropriate, that if this case is going to be abated for any
12 period of time that it be abated and we do it with mediation
13 which might be productive in lieu of an appraisal which, quite
14 frankly, is not going to get anybody anywhere in this case.

15 **THE COURT:** Well, where are you-all in the discovery
16 to see if it's appropriate now to go on to mediation? Your
17 thoughts on that?

18 **MR. DENNIS:** We're actually coming up on the date in
19 the schedule when the Court indicated that Plaintiff could make
20 a demand which is November 15.

21 **THE COURT:** But sometimes it depends on where you-all
22 are in discovery and how that's proceeded. So --

23 **MR. DENNIS:** Where we all are is, as I said, the
24 Plaintiff has produced a number of documents. We have the
25 issues that are here today. We've taken four depositions. We

1 have a fifth teed up for November 6th and the remainder of the
2 depositions sort of depend on some of the rulings here today.
3 We had also proposed dates for the depositions of witnesses
4 that Plaintiffs had sought in the first two weeks of December.
5 So that's where we are on discovery.

6 **MR. CHRISS:** Judge, just from Sandpiper's
7 perspective, we're coming up on a deadline next week to
8 designate our experts and as a result of preparing for that, I
9 have been educated by my experts to the extent that the extent
10 of the damage to the building and the extent to which we feel
11 Lexington has undervalued the claim is greater than we
12 previously thought. And we're going to provide Lexington that
13 information in connection with our expert reports. We're going
14 to abide by the Court's docket control order with respect to
15 making a demand.

16 We never have any objection going to going to
17 mediation before, during or after an appraisal award. Of
18 course, after appraisal award, we might have some objections to
19 it but -- and we have not taken any depositions in this case.

20 **THE COURT:** I just wonder. You know, sometimes I
21 say, okay, you guys should go to mediation. You say, well, we
22 need to do some more discovery. We need more information. So
23 that's kind of why I was trying to figure out --

24 **MR. CHRISS:** Right. I haven't taken one deposition
25 in this case, Judge.

1 **THE COURT:** So not ready. So the Plaintiffs --

2 **MR. CHRISS:** No, I don't need to take a deposition to
3 go to mediation.

4 **THE COURT:** Good.

5 **MR. CHRISS:** I have the burden of proof with respect
6 to the amount of the damages and I know what they are.

7 **THE COURT:** Okay. But in terms of discovery, you
8 don't need to do depositions or get anything else from the
9 Defense to go to mediation?

10 **MR. CHRISS:** Not to go to mediation.

11 **THE COURT:** All right. Because that's what I hear
12 Mr. Dennis saying, is let's go to mediation before we do, you
13 know, this appraisal and abatement and --

14 **MR. DENNIS:** I think --

15 **THE COURT:** -- the Defense is sometimes the one
16 arguing, no, we need more discovery.

17 **MR. DENNIS:** I think that's appropriate, your Honor,
18 because I don't think that abatement --

19 **THE COURT:** Like right now, you don't need to do
20 anything else?

21 **MR. DENNIS:** In lieu of abating this case for no
22 other purpose than going to appraisal if there's going to be an
23 abatement or a stay of any type, we should use that for a
24 mediation.

25 **MR. CHRISS:** And, Judge, there's no reason why we

1 can't do both at the same time. There's nothing about the
2 appraisal process that prevents the parties from settling the
3 case. That can -- or the insurance company from paying some
4 portion of the claim. They can always do that while the
5 appraisal is pending but the contract provides that we're
6 allowed to have the amount of our loss determined in that
7 fashion.

8 I know the Court is very familiar with this. This
9 Court and others -- myriad Courts have ordered that cases be
10 abated and that the matter go to appraisal.

11 **THE COURT:** I just did that last week. I don't know
12 what -- you know, what the argument is going to be here but I
13 guess I'm just asking. Are you-all ready to go to mediation?
14 Then why don't you-all go to mediation? I mean, we can work
15 through discovery issues today or whatever but if that's where
16 you-all are at and you-all are both open to it, why don't you
17 do it instead of maybe the appraisal and waiting and doing the
18 abatement?

19 And you're right. It doesn't have to be exclusive
20 but if you-all are ready to go to mediation, go. Right?

21 **MR. CHRISS:** I'm happy to do that, Judge, and we'll
22 file our motion to compel appraisal and the Court can take it
23 up in due course and if we settle the case, fine and if we
24 don't, that's fine too.

25 **THE COURT:** And we can address that. It can be

1 pending pending mediation, I guess. So do you-all want to then
2 -- are -- would you-all agree on a mediator or are we going to
3 have to work through that together or where are you-all?

4 **MR. DENNIS:** We could discuss that after we finish
5 here today, your Honor. I mean, we're here. There's no point
6 not to.

7 **MR. CHRISS:** Actually, we're going to go to mediation
8 and we're here. Rather than delay the matter trying to figure
9 out between here and New York who we're going to use as a
10 mediator, I'd rather just let the Court know now we'd be
11 opposed to mediating the case anywhere but Corpus Christi and
12 we would prefer to have the mediator somewhere, you know,
13 within 50 miles of here who understands Hurricane Harvey
14 claims.

15 And there are a number of good, local mediators who
16 have mediated these Hurricane Harvey cases before. Mr. Lehrman
17 has done it and there are others.

18 **MR. DENNIS:** We are not opposed, your Honor, to
19 mediating in the area of Corpus Christi. Houston is another
20 possibility since there are many mediators that are based out
21 of Houston. I don't think that we would drag everybody up to
22 New York for a mediation in New York. So I don't have any
23 problem with doing it down in this area.

24 **THE COURT:** So agreement to mediate here. And then
25 what about mediators?

1 **MR. DENNIS:** That -- we have a few people that we
2 have used on various matters in this area and we can --

3 **THE COURT:** Like who?

4 **MR. DENNIS:** Greg Thompson is one of them.

5 **MR. CHRISS:** I've used him before and he's terrible,
6 Judge. We can't agree to him.

7 **THE COURT:** Okay. And --

8 **MR. CHRISS:** We had a case not settle with him.

9 **MR. DENNIS:** Well, the fact that a case did not
10 settle --

11 **THE COURT:** Okay. Wait. I'm just -- let's go down
12 names. Maybe we can agree on one.

13 **MR. DENNIS:** Well, your Honor, then I will go back to
14 my office and collect up the rest of the names.

15 **THE COURT:** Okay. So you-all will continue visiting
16 about that?

17 **MR. DENNIS:** Uh-huh.

18 **THE COURT:** So when are you-all looking at mediation,
19 like within the next -- how many -- by when?

20 **MR. DENNIS:** I think we could probably get it done --
21 I have -- you know, since we don't have a mediator, we don't
22 have a calendar yet but I would think that by December 15th, it
23 should be done. November is a little bit of a tough month
24 because it's truncated and I think most mediators need more
25 than 21 days or so notice.

1 **MR. CHRISS:** Yeah. But I think the main problem
2 we're going to have, Judge, is not that we're not ready to go
3 talk. The main problem is going to be getting somebody good
4 who's got a date available. I know that, for example,
5 Mr. Lehrman here in Corpus Christi, you -- usually you've got
6 at least a two-month wait. The same thing with David Dunn.
7 We'd be agreeable to him. I don't think Mike Elliott is doing
8 these anymore. So that's -- the problem's not that we're not
9 ready to talk. The problem is that --

10 **THE COURT:** Finding a mediator.

11 **MR. CHRISS:** -- it's going to take us a while to get
12 a mediator.

13 **THE COURT:** As to when you can get it done.

14 **MR. CHRISS:** Right. Could I just ask one thing of
15 the Court?

16 **THE COURT:** Yes.

17 **MR. CHRISS:** Your Honor, would the Court be willing
18 to appoint us a mediator if we can't agree on one?

19 **THE COURT:** Yes.

20 **MR. CHRISS:** Okay.

21 **THE COURT:** Yes. I just -- you know, I let you-all
22 try to agree first.

23 **MR. DENNIS:** That's the preferable and usual route,
24 your Honor.

25 **THE COURT:** Yes. Okay. Then if you don't agree,

1 I'll appoint a mediator. So maybe shall I give you-all a week
2 to try to find someone and agree on someone?

3 **MR. CHRISS:** Yes, Judge. That will be fine.

4 **MR. DENNIS:** How about -- your Honor, could we just
5 have ten days? I need one day to get back to my office to do
6 this.

7 **THE COURT:** That's fine. So ten days. Okay. So
8 let's see.

9 **MR. CHRISS:** And if we can't agree, Judge, then one
10 of us will file a motion to appoint.

11 **THE COURT:** Okay. Or just let Brandy know.

12 **MR. CHRISS:** Oh, yeah. Okay, we'll just -- that'd be
13 great. We'll just email Brandy.

14 **THE COURT:** Okay. So just -- there were a couple of
15 issues I think we need to address before we really hit the
16 motion for protection, motion to compel. And one of them was
17 what law controls the Work Product Doctrine and I actually
18 ruled on this before, I believe, and the Court finds that the
19 Federal Work Product Protection under Rule 26(b) applies here
20 rather than the State rule. So I think that should at least
21 help us move now past that.

22 **MR. CHRISS:** Was the provision of the Texas Rules
23 provide that it is a privilege something that the Court
24 addressed in that case?

25 **THE COURT:** I don't know that I addressed it exactly

1 in that case. So I've just kind of gone through a -- I've
2 reviewed, researched and looked at other cases and all your
3 briefing. And I think the Court's going to say Federal -- the
4 Federal rule applies here rather than the State.

5 If you want to make any other comments, I am. I'm
6 going to let you-all know where I'm at and then if you want to
7 comment further, you can.

8 **MR. CHRISS:** I have nothing to add to our briefing on
9 the subject, Judge. I would just point out that all the cases
10 that are cited to the Court, none of them deal with the fact
11 that the Texas Rules of Civil Procedure specifically provide
12 that Texas Work Product privilege is a privilege and the
13 Federal Rules provide that State law governs the application
14 privileges.

15 **THE COURT:** Yeah. I looked at all that.

16 **MR. CHRISS:** Okay.

17 **THE COURT:** So I'm going to stick with that.

18 Then I think there were issues in terms of the
19 privilege log that was provided by the Plaintiff and dates that
20 we're looking at as to when that work product protection should
21 come into play. So I think the privilege log was probably a
22 little vague in terms of -- I need to go back and find exactly
23 how the Plaintiff worded some of the privileges that in terms
24 of just attorney-client privilege or material prepared about
25 the suit after litigation was anticipated.

1 I don't know that that gives enough for the Defense
2 to determine if there's something there that they need to seek
3 or request. Do you want to comment on that, Mr. Chriss?

4 **MR. CHRISS:** Two things, Judge. First of all, that's
5 not the only information given. We also gave them the date of
6 the communication and the person -- the persons who were
7 involved in the communication.

8 **THE COURT:** Right. But you need to be detailed about
9 -- you need to be detailed without giving your privilege away
10 but enough for them to know, okay, what is it basically.

11 **MR. CHRISS:** Well, then I would request from the
12 Court some time to do that, especially given the fact that the
13 evidence that we presented to the Court in support of our
14 motion for protection indicates that, you know, we're dealing
15 with a vast corpus of material.

16 **THE COURT:** Yeah, I know and I'll get to that in a
17 minute in terms of some of the requests.

18 **MR. CHRISS:** I mean, we've already produced hundreds
19 of thousands of pages of documents. And so I would just -- if
20 the Court's going to rule that way, I would just ask for some
21 indulgence.

22 **THE COURT:** Oh, no, definitely. I'll just -- and
23 then we need to look at the dates as to when -- anticipation of
24 litigation, I know Plaintiff was arguing the March 18th date.
25 We have that kind of starting off to Defendants going, well,

1 when the lawsuit was filed, which is way too far down, and then
2 there's other dates in there as to when different things
3 happened. So I believe maybe March 8th was when maybe legal
4 counsel was first brought up at a board meeting.

5 **MR. CHRISS:** That's correct.

6 **THE COURT:** And then we have something in April
7 where --

8 **MR. CHRISS:** Where I was hired.

9 **THE COURT:** -- an attorney was retained at that
10 point. Then the Defense rejects in July --

11 **MR. CHRISS:** Then we filed a --

12 **THE COURT:** -- I believe.

13 **MR. CHRISS:** Yes. We filed a pre-suit notice and a
14 proof of loss indicating that we would file suit and then we
15 received a negative response.

16 **THE COURT:** Right. Which I believe was late July.

17 **MR. CHRISS:** Yes.

18 **THE COURT:** And then the suit was filed in September.
19 So do you want to say something, Mr. Dennis?

20 **MR. DENNIS:** No, I believe that your Honor has the
21 chronology roughly correct and we have not asserted a position
22 as to when Plaintiff anticipated litigation because of what
23 they are arguing that in some ways, the date is almost
24 irrelevant. So we can address that.

25 **THE COURT:** Well, doesn't it go the privilege log in

1 terms of what the Plaintiff was saying, when they have to get
2 more detailed or --

3 **MR. DENNIS:** The Plaintiff's position, as I
4 understand it, your Honor, is that once they anticipated
5 litigation, every communication of mine, the shareholders, the
6 board of directors, any communication between a board of
7 director member and a consultant or anybody about the issues or
8 the facts related to this claim and this action are work
9 product protected.

10 Now, our main argument is that that can't possibly be
11 correct as a work product argument given the scope of the
12 Federal Rules of Work Product protection. A document, in order
13 to be within work product protection, has to have been created
14 primarily for the purpose of litigation.

15 **THE COURT:** Right, I don't know. Is it the
16 Plaintiff's position that every single thing after that date is
17 necessarily privileged? That's not the way I read --

18 **MR. CHRISS:** No, your Honor, that's not our position.

19 **THE COURT:** Yeah.

20 **MR. CHRISS:** We've produced --

21 **THE COURT:** Yeah.

22 **MR. CHRISS:** -- thousands of pages of documents after
23 that date.

24 **THE COURT:** Right. That's not the way I read that.

25 **MR. DENNIS:** It is their position, your Honor.

1 **THE COURT:** No, he just said it's not.

2 **MR. DENNIS:** He said they produced thousands of pages
3 of documents but those are invoices and bills. Plaintiff's
4 position is that we can have all the invoices and bills after
5 March 8th, 2018 that we want but if we ask a board of director
6 member, did you discuss the windows and doors on May 15th,
7 2018, it's Plaintiff's position that that discussion is work
8 product and the same as to any discussion by any person or
9 board of director member at Sandpiper with any other
10 consultant. Anything that a representative, as they call it --
11 but any person on behalf of the Sandpiper said anything to
12 another person about this claim after March 8th, according to
13 Plaintiffs, is work product protected.

14 **MR. CHRISS:** That's actually not quite what we're
15 saying, Judge. What we're saying under the cases that we've
16 cited to the Court in particular, the *In Re: Grand Jury*
17 *Subpoena* case. What we're saying is that internal
18 communications between representatives of my client and/or
19 their consultants is work product privilege because those
20 communications would not have happened if we were not involved
21 in litigation and that's what the *In Re: Grand Jury Subpoena*
22 case says.

23 We are not withholding communications between my
24 client and their repair contractors. We're not withholding
25 photographs. We're not withholding any other materials other

1 than materials that are either attorney-client privilege or
2 that would be privileged as work product under the *In Re: Grand*
3 *Jury Subpoena* case.

4 **MR. DENNIS:** The *In Re: Grand Jury* -- there is not a
5 single case that Plaintiffs decided that support their
6 position, not one.

7 **THE COURT:** Okay. There is going to be documents
8 that are going to be covered by the work product privilege
9 after a certain date.

10 **MR. DENNIS:** They may be, your Honor, but they are
11 not board of director meeting minutes talking about how we're
12 going to repair windows and doors.

13 **THE COURT:** Okay. Well, they may be so but you're
14 talking in terms of everything and we can talk about board of
15 director meetings and we can talk about -- I believe there were
16 some emails but that's not the way you characterized this.

17 **MR. DENNIS:** Well, I think it's pretty close, your
18 Honor. Mr. Chriss just said, well, that's not exactly what
19 we're saying but it's very close. And the borderline, I don't
20 really understand but it's not a major difference. How I just
21 described their position is, I believe, materially correct.

22 **THE COURT:** Okay. So I need establish a date and I'm
23 going to let -- Mr. Chriss, if you want to argue -- I know you-
24 all were looking at March 8th and you-all said, if not, then
25 July 24th or something.

1 **MR. CHRISS:** Actually, your Honor, our position is
2 that March 8th is the date when my client began to anticipate
3 litigation. That's reflected in the board minutes the Court's
4 already seen. That's when they made the decision to begin
5 interviewing lawyers to proceed with litigation. They actually
6 hired us -- I've also told the Court when we were interviewed.
7 I think we were interviewed in late March. I could be wrong
8 about that. It might have been early April because I know we
9 were hired April the -- I think it was the 13th or maybe the --
10 I can't remember the exact date.

11 But it's just -- it defies logic that they -- that my
12 client could have not anticipated litigation sometime during
13 that period of time when they hired us on a contingent-fee
14 basis to proceed with litigation.

15 So the second the thing I would want to raise that I
16 forgot to mention earlier, Judge, is this. One of the aspects
17 of my motion for protective order is simply a -- if you like
18 Kant's categorical imperative, I prefer what is sauce for the
19 goose is sauce for the gander. And that is this, the Defendant
20 has not produced any privilege logs after the date that the
21 suit was filed but they require -- they're requiring us to
22 produce privilege logs ad infinitum. And most of the privilege
23 logs that we've produced -- and they actually fill up this
24 briefcase. There are hundreds of pages --

25 **THE COURT:** There's a lot of documents here.

1 **MR. CHRISS:** Yeah, there's hundreds of pages. Most
2 of those deal with documents that were generated after the suit
3 was filed. So if we're going to have a rule that we don't have
4 to produce privilege logs after suit was filed, I'm merely
5 asking the Court -- I think that's a reasonable rule and I'm
6 asking the Court if I can take the benefit of that same rule.

7 **THE COURT:** Well, is that what you're doing?

8 **MR. DENNIS:** No, your Honor. I don't want any more
9 privilege logs. I haven't asked Mr. Chriss for a privilege log
10 after the commencement of this litigation. There's no motion
11 to compel a privilege log. I don't want any more privilege
12 logs. Mr. Chriss voluntarily produced a privilege log all on
13 his own.

14 **THE COURT:** Because if he's going to -- the Rules
15 require that.

16 **MR. DENNIS:** Yes, but there was -- he didn't call me
17 up beforehand and say, is this the date we're going to use or
18 some other date that we're going to use. If -- he produced the
19 privilege log --

20 **THE COURT:** Are you holding back documents and have
21 you filed a privilege log if you are?

22 **MR. DENNIS:** Yes, we have and --

23 **THE COURT:** Where is it? He said he doesn't have it.

24 **MR. CHRISS:** No, no.

25 **MR. DENNIS:** Yeah --

1 **MR. CHRISS:** They've produced the privilege log.
2 They just --

3 **THE COURT:** After --

4 **MR. CHRISS:** Correct.

5 **THE COURT:** -- after the suit date?

6 **MR. CHRISS:** And so the Court's just indicated a few
7 minutes ago that the Court would like me to be more specific
8 with respect to my privilege logs. I understand that ruling
9 and I will comply. I'm merely --

10 **THE COURT:** We're trying to find the date now.

11 **MR. CHRISS:** I'm merely asking that I not have to do
12 that with respect to privilege logs after the day that the suit
13 was filed because they're apparently in agreement that that's a
14 reasonable rule.

15 **MR. DENNIS:** Agreed.

16 **THE COURT:** Okay.

17 **MR. CHRISS:** Okay. So now we're --

18 **THE COURT:** So we're just trying now working back to
19 the dates?

20 **MR. DENNIS:** Yes.

21 **THE COURT:** Because, obviously, date of suit is too
22 late. So do you want to comment, Mr. Dennis?

23 **MR. DENNIS:** Yes, your Honor. I have in front of me
24 the March 8th meeting minutes that were relied on by Plaintiff.
25 I would first point out that there's no affidavit before the

1 Court from anybody on behalf of Sandpiper, any board member,
2 any management company, anybody saying that they anticipated
3 litigation on March 8th.

4 If this was such a magic date, such a momentous
5 occasion, one would certainly think that it would simple enough
6 to get a witness to say that but there is none. There is not
7 been any piece of evidence given to this Court to establish
8 anything. And the March 8th meeting minutes -- I'm going to
9 read from the unredacted or the only marginally redacted piece.

10 It says in its entirety, "Mr. Trump (phonetic)
11 Crawford (phonetic) explained that all CCMS managed
12 properties are experiencing the same troubles with
13 insurance companies and that has been a very slow
14 process. In his experience, dealing with insurance
15 companies post-Hurricane Harvey, having a legal
16 entity initiate communication with insurance tends to
17 help speed up the process. Colonel Michael Smiley
18 suggested that after listening to the board's
19 discussion, a public adjustor or a lawyer is needed."

20 There's no discussion here about retention of
21 counsel. If this -- yeah, the next paragraph I don't have but
22 even if they were retained, the cases all hold that the mere
23 retention of counsel does not establish anticipation of
24 litigation.

25 **THE COURT:** Okay. I want Mr. Chriss to respond but

1 I'm certainly looking no later than July 24th when you-all
2 rejected the claim but do you want to respond, Mr. Chriss?

3 **MR. CHRISS:** Yes, your Honor. If I might just
4 correct my friend here. I'm sure it was inadvertent on his
5 part but if you look, you'll find that Exhibit E to our motion
6 for protective order, I believe, with respect to -- I believe
7 it's with respect to the subpoenas is an affidavit from English
8 Allbritton who is the building manager at Sandpiper and on Page
9 2 of that affidavit, second paragraph, we have a statement that
10 is evidence that has not been contradicted by anyone.

11 "When it became clear that Lexington would not pay
12 the full cost of removing and replacing the windows,
13 curbs, sliding glass doors, unit entry doors and
14 several other aspects of the hurricane damage to the
15 building, Sandpiper decided to hire an attorney and
16 pursue litigation. The decision to proceed in this
17 manner was initially made at the March 8th, 2018
18 board meeting. It was quickly determined that
19 litigation would be necessary. The idea of hiring a
20 public adjustor was not pursued and Mr. Chriss and
21 Ms. Snapka were interviewed by the Sandpiper board on
22 April the 4th of 2018."

23 So there is evidence before the Court that either on
24 March the 8th or certainly no later than April the 4th of 2018,
25 Sandpiper anticipated litigation.

1 **MR. DENNIS:** Your Honor, I would point out that the
2 March 8th meeting minutes have no such statements in them. I
3 just read the entirety of the unredacted statement. There's a
4 paragraph after --

5 **THE COURT:** All right. You were complaining that
6 there was no evidence by anyone. So he pointed out --

7 **MR. DENNIS:** That's right, your Honor.

8 **THE COURT:** -- there was that affidavit.

9 **MR. DENNIS:** Okay.

10 **MR. CHRISS:** And I would just point out, Judge,
11 this --

12 **THE COURT:** Okay. I would like --

13 **MR. CHRISS:** All right, go ahead, Judge. I'm sorry.

14 **THE COURT:** I've heard enough.

15 **MR. CHRISS:** No problem.

16 **THE COURT:** I'm going to set the date. Litigation
17 was anticipated as March 8th, 2018. So then that triggers --
18 we need to talk about then because I'm not sure we're real
19 clear on the privilege logs then. Are we saying after that
20 date, what are you-all wanting to do?

21 **MR. CHRISS:** I believe what we -- I think if I heard
22 correctly what we kind of all have come to a consensus about is
23 that I should be more specific in my privilege logs between
24 March the 8th of 2018 and the date that suit was filed and that
25 I did not --

1 **MR. DENNIS:** We agreed --

2 **MR. CHRISS:** -- supplement it after that date.

3 **MR. DENNIS:** -- we agreed on the cutoff date and the
4 Court has indicated that it will require those further logs be
5 produced. So when the log is produced, we'll take a look at
6 it, see what we can do, call up Mr. Chriss. If we have any
7 more issues, we'll try to work them out.

8 **THE COURT:** Okay. So let's go to the motion for --
9 it was all part of it but I thought if we could clear up those
10 issues, it might make things a little easier to get through.
11 On the Plaintiff's motion for protection then, for discovery
12 and the motion -- and to modify or quash the subpoenas of the
13 three individuals. And I -- we can do this -- I do think there
14 are several here that when I looked through them I think are
15 overbroad. There were some that I thought were not. And there
16 was a couple that had some mixed questions.

17 So I can let you know the ones I think are overbroad
18 and, Mr. Dennis, you can let me know why they're not and then
19 vice versa. So let me pull those. Okay. These are the ones I
20 think from the subpoena -- because all three were the same,
21 right?

22 **MR. DENNIS:** Yes, your Honor.

23 **THE COURT:** It was -- I just went through one of
24 them. It's request -- these are the ones that I think are
25 overbroad. They refer kind of to policy, property, some

1 general phrases, no time limitation, no particular request,
2 probably going to include a multitude of documents which are 1,
3 12, 13, 17, 24 and 25.

4 So, Mr. Dennis?

5 **MR. DENNIS:** Yes, your Honor.

6 **THE COURT:** Do you want to -- let me find those.

7 **MR. DENNIS:** With regard to there not being a time
8 limitation --

9 **THE COURT:** I'm sorry. What are you saying? I'm
10 congested. So I'm having a little trouble --

11 **MR. DENNIS:** I'm sorry. I'll speak up, your Honor.

12 **THE COURT:** That's good, yes.

13 **MR. DENNIS:** With regard to a time limitation related
14 to all documents concerning policy, the policy itself except
15 incepted --

16 **THE COURT:** Okay, that's fine. But all documents
17 concerning the policy, that's broad.

18 **MR. DENNIS:** Okay. We would be willing to narrow
19 that, your Honor, to all documents concerning the policy with
20 regard to this loss.

21 **THE COURT:** With regard to the loss?

22 **MR. DENNIS:** Yes.

23 **THE COURT:** Oh, I'm looking at Mr. Chriss.

24 **MR. CHRISS:** Uh --

25 **THE COURT:** I mean, that narrows it --

1 **MR. CHRISS:** That -- yeah, that sort of -- that's the
2 same as --

3 **THE COURT:** Goes with the other ones.

4 **MR. CHRISS:** -- all documents regarding this loss.
5 It's equally broad. I mean, that's the problem here and we've
6 cited the Court to several cases that say you just can't do
7 this. You have to tell me what it is that you're looking for.
8 You can't just say, give me all the documents about Sandpiper.
9 Give me all the documents about your claim. Give me all the
10 documents about your damages. You can't do that. It's not
11 allowed.

12 **MR. DENNIS:** First of all, your Honor, these
13 documents have already been collected and are -- supposedly are
14 going to be produced to us --

15 **THE COURT:** Okay. Then why I am doing this? I'm
16 really busy.

17 **MR. DENNIS:** I don't know. Mr. Chriss told --

18 **THE COURT:** I'm really busy. If you-all don't
19 need --

20 **MR. DENNIS:** -- Mr. Chriss told us and he told the
21 Court in his reply papers on this motion that all of these
22 documents, responsive documents had been collected and will be
23 produced to us. He says --

24 **THE COURT:** Well, he objected to things. So if you
25 want that -- if you're okay with that, with his objections and

1 everything he gave you, then let's just stop this right now.

2 **MR. DENNIS:** Well, the reasonable --

3 **THE COURT:** I mean, if you're okay with that, I am.

4 **MR. DENNIS:** -- the reasonable place to start, your
5 Honor, was if we serve subpoenas and if they have collected
6 documents, then we should have -- these would have been
7 produced back in July when they were collected and we probably
8 could have worked this out by now. I don't know why they
9 haven't been produced.

10 **THE COURT:** Well, I thought -- anyway --

11 **MR. CHRISS:** Your Honor, the reason they haven't been
12 produced is because the Rules specifically provide that when a
13 subpoena is issued invoking the contempt power of the Court,
14 the respondent need not produce documents if that subpoena is
15 clearly overbroad in its face, which this one is. We have
16 collected documents from these witnesses and we believe them to
17 be complete because we asked them, this is to provide us with
18 this information.

19 We haven't been through all the documents because we
20 are under no obligation to produce them and I just want to --
21 until these objections are resolved and I just want to mention
22 one other category of documents, your Honor, that's in the
23 subpoenas that the Court -- it wasn't on the Court's list, just
24 to have them --

25 **THE COURT:** And we can work through the other ones.

1 These were just kind of very obvious to me, you know.

2 **MR. CHRISS:** Right. Okay. Then if you want me to
3 hold that thought, I will.

4 **THE COURT:** Yeah.

5 **MR. DENNIS:** We can -- so Number 1, your Honor, we
6 would limit that way because the loss has an obvious starting
7 date and to say that the loss is not relevant, you know, really
8 is a little bit much. So that takes care of the time
9 limitation with regard to Number 1, I believe, which was the
10 Court's issue.

11 With regard --

12 **THE COURT:** That wasn't the only issue.

13 **MR. DENNIS:** Okay. But if your Honor has -- we can
14 work through it. I'm willing to go through this with the
15 Court. With regard to Number 12, "All documents relating to
16 Hansen's work on the property." Okay. Hansen is one of the
17 contractors that has worked at the property. There are
18 specific time periods when Hansen has worked on the property
19 and if we wanted to put a time limit on that pre-loss, we would
20 be willing to do so. We could go back to -- for instance, this
21 loss was in 2017. We can go back to 2010 if that would satisfy
22 the Court or we could do 2012 or something like that.

23 **MR. CHRISS:** Your Honor, we -- Counsel knows this.
24 We objected to producing Hansen documents and Hansen has
25 produced -- from what we've been told in response to the

1 subpoena that was directed to them, they have produced all of
2 their documents prior to March the 18th of 2018. They've
3 already produced them.

4 **THE COURT:** Waive -- no limitation on the time? They
5 just produced everything?

6 **MR. CHRISS:** Right, all the way as far back as their
7 records go.

8 **THE COURT:** Okay. Do you have that already?

9 **MR. DENNIS:** We have -- yes, we have documents from
10 Hansen, your Honor.

11 **THE COURT:** Okay. So what --

12 **MR. DENNIS:** The question is, what did these three
13 board members discuss with Hansen regarding his work relating
14 to this loss and this property? We have Hansen documents, yes,
15 but we also asked Sandpiper for documents relating to Hansen
16 and they produced none. And so this is just the same question.
17 It's a different set of documents. So that's why we have
18 Hansen here.

19 **MR. CHRISS:** And see, this is why proportionality and
20 burden are important, Judge. How is Mr. Ramichiati (phonetic),
21 for example, supposed to know whether a document relates to
22 Hansen? I mean, what does that mean? If he's asking for
23 communications with Hansen, they've already been produced
24 because Hansen produced them.

25 **MR. DENNIS:** Your Honor, it's fairly clear what

1 Hansen did on the project. Mr. Ramichiati is familiar with
2 that, as are the rest of the board members. So that issue is
3 more hypothetical than realistic.

4 **MR. CHRISS:** See, this --

5 **MR. DENNIS:** Plus -- and I would point out,
6 Mr. Ramichiati has not submitted any affidavit on these points.

7 **MR. CHRISS:** Actually, Mr. Ramichiati has produced an
8 affidavit. It's attached to the Court -- to my motion before
9 the Court. I believe it's Exhibit F.

10 **MR. DENNIS:** It did not address whether or not
11 Mr. Ramichiati has any other standing of any -- of this
12 document request or any other document request.

13 **MR. CHRISS:** Judge, this is why we're demanding
14 appraisal is because he just got through saying that it's
15 pretty clear what Hansen did at the property but he won't stop
16 making these requests for discovery that are running up massive
17 costs and time expenditure and running off contractors from the
18 Sandpiper who don't even want to work there anymore because
19 they all keep getting subpoenas. All we're asking is that the
20 case be resolved based upon the facts, not based upon fishing
21 expeditions.

22 **THE COURT:** Okay. If you-all can't -- it's
23 overbroad. If you-all can't agree on how to modify it, then
24 it's overbroad, not allowed. Okay.

25 **MR. DENNIS:** 13, your Honor, is, "All documents

1 related to estimates and/or work by the following entities at
2 the Sandpiper property." And there are one, two, three, four
3 of them. Each of them has been involved with the repair work
4 at the property and so it's no time issue with regard to them.
5 It's documents related to estimates and/or work by the
6 following entities. It's not a generalized document request.

7 Each of those folks, Lee Little, Hansen, Harvest and
8 Taylor Mays (phonetic), which is TMC, are specific contractors
9 who have done specific things who have negotiated contracts
10 with Sandpiper and so the board of directors know who they are.
11 And so 13 is also limited by the actual facts on the ground.

12 **THE COURT:** All right.

13 **MR. CHRISS:** And once again, your Honor, he has all
14 of Lee Little's estimates. He's subpoenaed them. He
15 subpoenaed all of the records that he is now seeking to have
16 these individuals search their cell phones and their laptops
17 for. A document that's related to an estimate is not relevant
18 to anything in this case. All that matters is what the
19 estimate is and how much it cost to fix the building. That's
20 all we're trying to get to, is give us the money to fix the
21 building and stop all of this Rambo stuff.

22 **MR. DENNIS:** That's what Mr. Chriss thinks the case
23 is about, your Honor, and I understand that. But if there are
24 documents in this case where they talk about how much money
25 they're spending -- we're spending five and half million

1 dollars to replace windows or curbs which we've now discovered
2 were leaking like sieves ten years before Harvey, that -- those
3 documents are relevant.

4 It is relevant to determine whether -- or what are
5 you picking off of Lee Little or what are you picking off
6 Harvest to do and why are they doing this and not that which
7 costs half as much? That's the -- I understand that Mr. Chriss
8 wants to turn to me and give me a bill but that's not the limit
9 of discovery here, your Honor.

10 **THE COURT:** Okay. But another issue is too, he's
11 saying you already have this.

12 **MR. DENNIS:** We have the documents from these
13 contractors. That's true. And we went to Sandpiper to get
14 Sandpiper's documents which we're also entitled to and when we
15 asked, well, did you ask your board members for documents, the
16 answer is, well, asked and one of them kind of gave us
17 something.

18 So we didn't go around Rambo style and subpoena every
19 board member. We picked the three out of the 115 people that
20 Sandpiper identified in their mandatory disclosure. So this
21 isn't a Rambo issue and, yes, we have documents from the
22 contractors but we're also entitled to the documents from the
23 folks on the other side.

24 **MR. CHRISS:** And my response, Judge, is why? I don't
25 understand this. Mr. Ramichiati is not an expert. Mr. Smiley

1 is not an expert -- Colonel Smiley is not an expert.
2 Dr. Mansuto (phonetic) is not an expert. So if Dr. Mansuto
3 sends a text to Mr. Ramichiati that says, yeah, talked to Lee
4 Little today. He sent us his estimate, that's not relevant to
5 anything. But I've got to go search for it because of the
6 overbroad nature of the request.

7 **MR. DENNIS:** It is relevant --

8 **MR. CHRISS:** It's not relevant to anything.

9 **MR. DENNIS:** It is relevant. You don't have to be an
10 expert.

11 **THE COURT:** Okay. Overbroad. If you-all want to
12 figure out how to limit it, go ahead. I'm not going to sit
13 here and babysit every single one of these. You-all are just
14 going to argue and argue and I think --

15 **MR. DENNIS:** Okay.

16 **THE COURT:** -- you-all are going to mediation anyway
17 and you-all tell me you-all have everything you need already.
18 So -- but we can go forward.

19 **MR. CHRISS:** Judge, the next one that we would ask
20 the Court to look at, I believe it's Number 15.

21 **THE COURT:** Well, 15 I showed here was mixed because
22 you, again, have the policy, the property, all documents which
23 I kind of already covered, I guess, in the first one.

24 **MR. CHRISS:** Yes, Judge, but it also specifically
25 requests communications with me.

1 **MR. DENNIS:** We went through that.

2 **THE COURT:** Well, I thought that the Defense said,
3 we're not doing that anymore.

4 **MR. DENNIS:** We went through that.

5 **THE COURT:** In the briefing, I thought it was
6 withdrawn, anything with counsel.

7 **MR. CHRISS:** Okay. I just want to make sure.

8 **THE COURT:** Okay.

9 **MR. DENNIS:** 17, your Honor, if I may. The unit
10 entry doors, the terrace window and sliding glass doors are
11 pretty specific items out of the number that they're seeking
12 from us. Collectively, that's about \$6 million of the claim.
13 So I don't think that Number 17 is overbroad, particularly with
14 regard to the fact that the Sandpiper has for a number of years
15 told its unit owners that they are responsible for repair of
16 these items. So that's why we asked for Number 17, your Honor.
17 I don't know if that affects your Honor's thinking in any way.

18 **THE COURT:** Do you want to comment, Mr. Chriss, on
19 17?

20 **MR. CHRISS:** All documents concerning the ownership
21 of or responsibility of the repair or replace or right to
22 modify these things? That's a -- the right is a legal question
23 and it doesn't make any difference what board members say,
24 think or any of that with respect to what they've insured under
25 the policy. They've insured those doors and windows under the

1 policy. Why are we being asked to run through texts and emails
2 and stuff to try to produce this? The Court's already
3 determined it's overbroad and I think it is.

4 **MR. DENNIS:** We're not asking -- well, your Honor has
5 indicated that --

6 **THE COURT:** Yeah, it's overbroad.

7 **MR. DENNIS:** Okay. 24 we've actually discussed it
8 with regard to the motions to compel --

9 **THE COURT:** Okay.

10 **MR. DENNIS:** -- and otherwise. So that's sort of
11 been taken care of.

12 **THE COURT:** We can come back to that one, I guess,
13 when we go with the motion to compel?

14 **MR. DENNIS:** I think so, your Honor.

15 **THE COURT:** Yes.

16 **MR. DENNIS:** And 25, I can't imagine that Mr. Chriss
17 and I are going to agree here to this.

18 **THE COURT:** No, that's very broad.

19 **MR. CHRISS:** Judge, if I --

20 **MR. DENNIS:** So I have -- your Honor, I have 1, 12 --
21 just a minute -- 1, 12, 15 --

22 **THE COURT:** 1, 12, 13, 17 and on 15 -- 15 and 16,
23 there were a couple of things because there's subparts and for
24 sure, at least the 1 and 3 on both of those are broad.

25 **MR. DENNIS:** Okay. So I have 1, 12, 13.

1 **THE COURT:** 7 --

2 **MR. DENNIS:** With regard to 15, it's Sub 1 and 3.

3 **THE COURT:** 16, 1 and 3.

4 **MR. DENNIS:** 16, 1 and 3.

5 **THE COURT:** I think it was 1 and 3. And 17 --

6 **MR. DENNIS:** 17, 24 and 25. Is that --

7 **THE COURT:** That I just -- yes, those are overbroad
8 and then there's other ones we can discuss.

9 **MR. DENNIS:** Okay.

10 **THE COURT:** Okay? So, Mr. Chriss, I guess I'll let
11 you address the others.

12 **MR. CHRISS:** Yes, Judge. The -- Number 17 -- I'm
13 sorry. We already talked about that. Number 18 -- and this is
14 my problem with all of these. "All contracts, letters of
15 engagement, bids and any other documents." Okay. I produced
16 contracts, letters of engagements, bids concerning Sandpiper's
17 engagement of hiring or otherwise using the services of all
18 these people, including me, to the extent that they weren't
19 privileged.

20 But any other document concerning Sandpiper's
21 retention of 20 -- I guess it's 21 different entities is
22 overbroad.

23 **THE COURT:** Okay. Do you want to address that,
24 Mr. Dennis, and any other document? He says he's produced
25 contracts, letters of engagement, bids.

1 **MR. DENNIS:** Yes, your Honor. The reason that we
2 sent these subpoenas out is that these documents -- these board
3 members either were not asked or did not provide any documents
4 to Mr. Chriss. So of the universe of documents that he's
5 producing, these are not among them. Now, there may be some
6 overlap.

7 **THE COURT:** So you didn't get contracts, letters of
8 engagement or bids?

9 **MR. DENNIS:** If they -- we got some data, your Honor,
10 yes, but the question is, is there a document, is there a
11 letter of engagement or a bid that is not among the documents
12 that Mr. Chriss has provided because he didn't get one? Now,
13 if you want to strike "and any other document concerning" --

14 **THE COURT:** Yes, we do. Yes, we do.

15 **MR. DENNIS:** Okay.

16 **THE COURT:** So all contracts, letters of engagement
17 and bids, right, Mr. Chriss?

18 **MR. CHRISS:** That's correct, your Honor.

19 **THE COURT:** Yes.

20 **MR. CHRISS:** And I would just point out, Subsection B
21 says, "Any board member." "All contracts, letters of
22 engagements, bids or any other documents concerning
23 Sandpiper's engagement of or otherwise using the
24 services of a board member." That's basically every
25 document in the Sandpiper archive that involves a board member

1 doing anything.

2 **MR. DENNIS:** No, it doesn't. It's all relating to
3 the investigation and/or repair of Harvey-related damage. The
4 whole question is limited to that. It's not every document or
5 every board member registered.

6 **MR. CHRISS:** But how are we supposed to determine
7 whether any board member has been engaged, hired or otherwise
8 used with respect to Harvey-related damage? What does that
9 mean?

10 **MR. DENNIS:** If there are no such documents, then
11 there are none.

12 **MR. CHRISS:** But I have to see --

13 **THE COURT:** Well, it's not about there not being any.
14 It's how do you go about -- with any board member, how do you
15 go about finding that?

16 **MR. DENNIS:** It's all contracts, letters of
17 engagement, bids --

18 **THE COURT:** He's saying any board member, that's too
19 many. That's too much.

20 **MR. DENNIS:** -- concerning Sandpiper's engagement or
21 using the services of a board member leading to Harvey-related
22 damages. And it's any board member. I don't -- it's a
23 limitation with regard to Doc 2, letters of engagement and
24 bids.

25 **THE COURT:** So they hired a board member to do some

1 work. Is that what you're saying?

2 **MR. CHRISS:** Well, then just say "hired" though,
3 Judge. It says --

4 **THE COURT:** I know but I'm just trying to --

5 **MR. DENNIS:** It says letters of engagement and bids
6 now relating to that topic and board members. So, yes, your
7 Honor, that would be one of them but it's not something that's
8 overbroad or incomprehensible.

9 **THE COURT:** Okay. So the only way we're going to
10 modify 18 is we're getting rid of "and any other document."
11 Okay.

12 Anything else on 18, Mr. Chriss?

13 **MR. CHRISS:** Yes. Subsection Q regarding Plaintiff's
14 counsel. I've already produced the contract by which we were
15 hired and I don't --

16 **MR. DENNIS:** Withdrawn.

17 **THE COURT:** Withdrawn.

18 **MR. DENNIS:** Withdrawn.

19 **THE COURT:** Yes. Okay. All right. Where else,
20 Mr. Chriss?

21 **MR. CHRISS:** Well, now we've got Number 19, Judge.
22 "All contracts, letters of engagement, bids and any other
23 document concerning hiring anybody else." That's obviously
24 overbroad.

25 **THE COURT:** Do you want to address that, Mr. Dennis?

1 **MR. DENNIS:** Yes, your Honor. We'll actually
2 withdraw 19 given what we've been through and where we are in
3 the litigation now.

4 **THE COURT:** Okay. All right, that's okay. That's
5 okay. Withdraw, you don't need to explain.

6 What else, Mr. Chriss?

7 **MR. CHRISS:** Again, Number 20, "All documents
8 concerning any replacement or repair to any terrace window
9 and/or sliding glass door." We have produced, I think, 19
10 years of maintenance records -- or 14 years of maintenance
11 records on this property. I don't know how long these
12 individual board members have owned units at the Sandpiper. I
13 don't know how I'm going to find documents that might have
14 something to do with some work that somebody did on some unit
15 going back to 2005.

16 **MR. DENNIS:** This, your Honor -- your Honor, I think
17 this one requires a bit more attention. We've discovered
18 through this case that the windows and the curbs at the
19 Sandpiper building have been the subject of constant attention
20 by the board from at least 2010 all the way up to Sandy and
21 including Sandy.

22 **MR. CHRISS:** Actually I think you mean Harvey.

23 **THE COURT:** Harvey.

24 **MR. DENNIS:** It's going to happen sometime. That's
25 all I can say. I apologize.

1 **THE COURT:** The hurricane.

2 **MR. DENNIS:** Through Harvey. So this is not an
3 instance where we're just shooting out of the blue. There
4 are --

5 **THE COURT:** I mean, he's saying, we've produced a lot
6 regarding that. So what exactly --

7 **MR. DENNIS:** But this is a particular document
8 request where an individual board member, one of these three,
9 may actually have specific emails on this topic because this
10 was a hot topic at that building. If we wanted to do -- if we
11 wanted to limit it in terms of time, I would limit it --

12 **THE COURT:** But what documents are you looking for?

13 **MR. DENNIS:** There were -- in several apartments,
14 there were efforts -- actually test runs in one or two
15 apartments to design a fix for the curbs so they would stop
16 leaking in 2010.

17 **THE COURT:** So is that what you're looking for,
18 documents that talked about fixing --

19 **MR. DENNIS:** We're also looking for the other
20 documents between these board members talking about the fact
21 that every time it rained strongly, the windows and curbs
22 leaked at this building because they want us to give them new
23 windows and curbs. This is not a light weight request or
24 something that's very general. These folks were constantly
25 talking about replacing or repairing the windows and the curbs

1 at that building because they leaked like a sieve.

2 **MR. CHRISS:** And the reason he knows that is because
3 I've given them 14 years --

4 **THE COURT:** Right.

5 **MR. CHRISS:** -- of maintenance records and I've also
6 produced for deposition both of the maintenance personnel at
7 the Sandpiper who have testified and identified windows and
8 doors showing him exactly what he's just talking about. One --

9 **MR. DENNIS:** Actually, the reason I know is that we
10 deposed Dr. Gotley (phonetic) who went on in great length about
11 this.

12 **THE COURT:** Okay. You've got the information. So --

13 **MR. DENNIS:** But that's -- we're not limited to one
14 person, your Honor. This is -- these are --

15 **THE COURT:** Okay. You need to limit your request.
16 So 20 is overbroad with "all documents concerning" going all
17 the way back to '05. So --

18 **MR. DENNIS:** We went to 2010, your Honor.

19 **THE COURT:** Well, it's not the date, I think, is what
20 -- that's not the only complaint.

21 **MR. DENNIS:** I -- your Honor, on this one, I think it
22 is the date. This is not -- this is a 6 million-dollar issue,
23 your Honor. I'm willing to compromise a lot of the other ones
24 because we've gotten a --

25 **THE COURT:** I -- the concern is all documents

1 regarding X, Y and Z. You really need to be more specific.
2 You've already gotten some information about this. So there --
3 if you have some information, you should be able to not be so
4 broad in your request.

5 **MR. DENNIS:** I don't think so, your Honor, because --

6 **THE COURT:** Okay.

7 **MR. DENNIS:** -- as I indicated, this was a topic of
8 constant conversation. It was addressed at board meetings. It
9 was addressed at annual meetings. It was the subject of --

10 **THE COURT:** Are you going to depose these people,
11 these three individuals or not?

12 **MR. DENNIS:** We're going to depose at least one of
13 them, your Honor. We're trying not to depose all of them. As
14 we indicated to the Court, we've come up with a list of 12 fact
15 depositions.

16 **THE COURT:** Yeah, we'll address that at the end of
17 the hearing.

18 **MR. DENNIS:** Understood. We're trying to chop this
19 thing down.

20 **THE COURT:** Okay, anything else on that one, 20?

21 **MR. DENNIS:** No, your Honor.

22 **THE COURT:** Okay. The Court finds it's overbroad.

23 **MR. CHRISS:** Judge, I don't think we have any
24 objection to 22 which is photographs, videos or depictions.
25 21, 23, 24 and 25 --

1 **THE COURT:** Okay. 25 I said was overbroad.

2 **MR. CHRISS:** Yes, yes.

3 **THE COURT:** 24 we're going to address when we address
4 the motion to compel --

5 **MR. CHRISS:** Right, okay.

6 **THE COURT:** -- the Defendant's.

7 **MR. CHRISS:** So then that just leaves "all documents
8 concerning" on 23 and "all documents concerning" on 21. And,
9 again, I would just echo what the Court said. I mean, there's
10 no reason why they can't be more specific about what it is
11 we're supposed to be looking for.

12 **THE COURT:** Yes, I agree.

13 **MR. DENNIS:** Your Honor --

14 **THE COURT:** Yes.

15 **MR. DENNIS:** -- fine. We'll limit 23 and 24 -- 23 to
16 emails among board members. As a matter of fact, we'll do the
17 same thing with 20. If that's the Court's real concern, we'll
18 do the same thing for 20 and 23 -- limit them both to emails
19 among board members.

20 **THE COURT:** Do you want to respond, Mr. Chriss?

21 **MR. CHRISS:** Yeah. All I can say to that, Judge, is
22 we will make a diligent effort through search engines and stuff
23 to try to --

24 **THE COURT:** That's all you can do.

25 **MR. CHRISS:** -- pull that out.

1 **THE COURT:** That's all you can do.

2 **THE COURT:** But we're talking about -- and submitted
3 an affidavit about how many emails we're talking about.

4 **THE COURT:** So we're going to 2010 on those?

5 **MR. DENNIS:** Well, on Number 20, emails, blah, blah,
6 blah from January 2010 to date.

7 **THE COURT:** 21, 2010? I'm just asking if your dates
8 -- or no, I'm just asking about your dates on 20, 21 and 23.
9 Are you changing all of them to 2010 or just --

10 **MR. DENNIS:** Yes, your Honor.

11 **THE COURT:** Okay. All right. And then what else do
12 we need to address on those, Mr. Chriss?

13 **MR. CHRISS:** Okay. We're just -- and those are all
14 limited to emails; is that right?

15 **THE COURT:** That's what he limited it to.

16 **MR. CHRISS:** Okay.

17 **THE COURT:** Yes. Any other ones we need to -- any
18 other numbered requests we need to address?

19 **MR. CHRISS:** Not in terms of over-broadness, your
20 Honor, just -- you know, we just have this -- we have the same,
21 you know, privilege argument that we made before that the
22 Court's already discussed. You know, I don't know where we --

23 **THE COURT:** Okay. Then I'm going to move to the
24 Defendant's motion to compel and I know that regards -- I guess
25 we were looking at Request 24, some board meetings. And I'm

1 going to let Mr. Chriss respond because I didn't see where the
2 board meeting minutes -- I got -- I was looking at the -- there
3 were two redacted versions of one that wasn't so redacted, I
4 guess.

5 I didn't think they were privileged, more protected
6 under the Work Product Doctrine. I thought those were things
7 that were going to be done anyway. They weren't done in
8 anticipation of litigation. So that's where I'm inclined to
9 go. So I'll let you start first.

10 **MR. CHRISS:** Sure. A couple, three things. Number
11 one, I'm not quite sure what happened with respect to more
12 deletions versus the previous of not having as many deletions.
13 As the Court can probably tell, I'm dealing with a lot of
14 documents.

15 **THE COURT:** Oh, yes, I know.

16 **MR. CHRISS:** That's number one. Number two, the
17 reason for the more redacted version is twofold. First of all,
18 the Texas privilege argument that the Court's already rejected
19 and, secondly, the Federal Work Product Doctrine argument under
20 the *In Re: Grand Jury Subpoena* case that is supported by
21 evidence in the form of two affidavits that we've submitted to
22 the Court that have not been contradicted that have -- that are
23 telling the Court that this is not ordinary business for
24 Sandpiper.

25 The first six months after this hurricane, Sandpiper

1 did whatever the insurance company told them. The insurance
2 company came in and specified and dictated to them what the
3 scope of repair would be, went and talked to their contractor
4 directly and told him what to remove and not to remove, left a
5 whole bunch of water damaged building materials in the
6 building.

7 And then in March of 2018 when my client began to
8 anticipate litigation, Lexington says, that's it. We're not
9 paying any more money. So I hope your building is fixed.
10 That's essentially what happened.

11 And after that point and after the point of hiring us
12 as attorneys -- after the point of anticipation of litigation,
13 what the evidence before the Court shows under the *In Re: Grand*
14 *Jury Subpoena* case is that you can't separate out the decisions
15 that the board was making about repairing the building from the
16 inherent fact that there's litigation being anticipated and a
17 suit actually underway.

18 So the discussions are not, hey, let's go ahead and
19 fix this. What do you guys think? The discussions are, the
20 insurance company hasn't paid us. They won't pay us. We're
21 going to have to sue them. We don't have enough money. So how
22 are we going to prioritize the repairs that we have to make?

23 You can't separate out anticipation of litigation and
24 helping me as an attorney work through this case from the
25 decisions that the board had to make under extreme

1 circumstances with litigation pending. So that's the reason
2 for the additional redactions.

3 **THE COURT:** Okay. Mr. Dennis?

4 **MR. DENNIS:** I'm not -- the test under Rule 26 as to
5 whether or not something is attorney work product is whether it
6 was a document created to assist counsel in the preparation of
7 the case. Your Honor just mentioned that you looked at the
8 board meeting minutes and there's nothing in them that falls
9 into that category, nothing at all. And the same is true of
10 all the other board meeting minutes produced by Sandpiper. The
11 discussions in those meeting minutes have nothing to do --

12 **THE COURT:** But -- okay. And generally the board
13 meeting minutes are not going to be prepared for litigation.
14 They're to inform whoever, other parties, people living in this
15 facility about things that are ongoing. So I guess,
16 Mr. Chriss, what -- your argument is that what has been
17 redacted there was done in anticipation -- I mean, regarding
18 the litigation to aid the litigation or what?

19 **MR. CHRISS:** Yes. It was done in anticipation of
20 litigation, Judge, and it's of the nature that I described
21 before. It's --

22 **THE COURT:** And I really don't know, I guess,
23 without --

24 **MR. CHRISS:** Right. And we've offered to submit
25 those in camera before.

1 **THE COURT:** I know and maybe that's what --

2 **MR. CHRISS:** Well, and you've already got them.

3 **MR. DENNIS:** Well, we have examples of them, your
4 Honor. We -- your Honor has read them. The March 8th meeting
5 minutes, there's nothing in those, nothing at all. Another set
6 was Exhibit -- the April 27 board meeting minutes.

7 **THE COURT:** What -- I'm looking at -- what number is
8 that?

9 **MR. DENNIS:** This is the April 27 minutes, the less
10 redacted version.

11 **THE COURT:** Right. But where are you, at Document
12 like 48-9 --

13 **MR. DENNIS:** 49-2, your Honor.

14 **THE COURT:** Okay, I've got it right here.

15 **MR. DENNIS:** Yes, 49-2.

16 **THE COURT:** Yes.

17 **MR. DENNIS:** Now -- let me know when you're ready,
18 your Honor.

19 **THE COURT:** Go ahead.

20 **MR. DENNIS:** Okay. In the more redacted version
21 which was supplied to us later, the entirety of Agenda Item 6
22 was redacted. Agenda -- the first paragraph of Agenda Item 4
23 was redacted were redacted. So we look at the first paragraph
24 of 49-2 under Agenda Item 4 which has nothing to do -- actually
25 it has nothing to do with preparing this case for litigation.

1 They're talking about their renewal which is the ordinary
2 course of business of the building.

3 Then we can look at Agenda Item 8 which was
4 completely -- just a minute, your Honor -- Agenda Item 6 --
5 excuse me. That was --

6 **THE COURT:** Yeah, I'm not -- I'm kind of not seeing
7 how that is to aid litigation or --

8 **MR. DENNIS:** It's not is the answer.

9 **THE COURT:** Well, I know. I'm asking Mr. Chriss.

10 **MR. DENNIS:** I'm sorry.

11 **MR. CHRISS:** Your Honor, the reason that my client
12 had to go get a new insurance policy is because of the way that
13 Lexington treated them on this claim and that's part of that --

14 **THE COURT:** That may be but how does that aid you in
15 this litigation?

16 **MR. CHRISS:** It relates to the litigation --

17 **THE COURT:** Well, it may relate to it but that's not
18 the standard I don't think.

19 **MR. CHRISS:** Well -- and all I can do is cite the
20 Court to the *In Re: Grand Jury Subpoena* case where --

21 **THE COURT:** Yes.

22 **MR. CHRISS:** -- the Court says, "The documents are
23 entitled to work product production because taking
24 into account the facts surrounding their creation,
25 their litigation purpose so permeated any non-

1 litigation purpose that the two purposes cannot be
2 discretely separated from the factual nexus as a
3 whole."

4 And what -- all I'm trying to say to the Court is,
5 this is not -- my client is not sitting there doing ordinary
6 business.

7 **THE COURT:** Well, that may be true but that doesn't
8 mean then it's protected either. I mean, they may be -- you
9 know, it's a whole different situation after the hurricane.
10 They were doing different things but I'm not seeing how the
11 information is -- in here is protected by the parameters of the
12 work product protection, I guess.

13 **MR. CHRISS:** And I'm not going to argue with the
14 Court.

15 **THE COURT:** Okay.

16 **MR. CHRISS:** I'm going to respect the Court's ruling.

17 **THE COURT:** Well, thank you. Let's move on. Okay.
18 So that was -- there was also emails.

19 **MR. DENNIS:** Yes, your Honor, and -- well, before we
20 move off the meeting minutes, I guess the question is where do
21 we go from here? We gave the Court certain examples of meeting
22 minutes that do not appear to us to be work product protected
23 under the Plaintiff's position. There are, of course, further
24 meeting minutes. They produced meeting minutes to us through
25 November which are the same thing. We just didn't dump them

1 all on the Court.

2 **THE COURT:** Well, it's the same ruling. So if --
3 Mr. Chriss, if you think there is something particular in there
4 that I need to review in camera -- but if it's just more of
5 what we've been looking at, I'm probably going to, you know,
6 turn -- you just turn it over.

7 **MR. CHRISS:** I will just have to go through those
8 meeting minutes after November of 2018, Judge, and do the best
9 I can and if I need to submit -- it's not voluminous. If I
10 need to submit something to the Court, I will do so.

11 **THE COURT:** Okay. By?

12 **MR. DENNIS:** Can you --

13 **MR. CHRISS:** Thirty days.

14 **THE COURT:** Okay. So we're moving on to the email
15 string or what was it?

16 **MR. DENNIS:** Yes, your Honor. That's the example.

17 **THE COURT:** Let me find it.

18 **MR. DENNIS:** Once again, it's only an example of the
19 same issue. It's at 49-4.

20 **THE COURT:** Okay.

21 **MR. DENNIS:** This is a document that doesn't even
22 relate to the Sandpiper.

23 **THE COURT:** Wait. I'm sorry. Go ahead.

24 **MR. DENNIS:** This is a document that relates to the
25 Seagull Condominium which is a condominium down the street from

1 Sandpiper. And one of Sandpiper's contractors became aware of
2 this document which talks about the curb issues at the Seagull
3 and that contractor then flipped it over to Sandpiper's
4 management.

5 Now, it can't possibly be work product protected with
6 regard to the Sandpiper because it doesn't even relate to the
7 Sandpiper. It wasn't done at the request of Sandpiper
8 management or Sandpiper counsel. So -- but nevertheless, it
9 was delineated as work product protected.

10 **THE COURT:** Okay. Mr. Chriss, do you want to address
11 that? I guess this was a report prepared for a different
12 building, right, with the -- yes. Okay.

13 **MR. CHRISS:** I'm not sure I know what document that
14 is being referred to here.

15 **THE COURT:** Do you have with you what -- they filed a
16 supplemental or an exhibit. What did you have -- sealed
17 exhibits.

18 **MR. CHRISS:** I did not bring the supplemental
19 exhibits, Judge.

20 **THE COURT:** Okay.

21 **MR. CHRISS:** They were quite voluminous.

22 **THE COURT:** Yes. So that's where he's -- he's
23 talking about -- there was an email. It has a report. I
24 believe the report was attached to it and the report regarded
25 -- was regarding a different building and the email was between

1 -- I have it here. Where is it -- Allbritton and -- I don't
2 know how --

3 **MR. CHRISS:** If you tell me who it was, I can tell
4 you what the --

5 **THE COURT:** Yeah.

6 **MR. DENNIS:** Your Honor, so --

7 **THE COURT:** It was to Charles Crawford --

8 **MR. DENNIS:** I'll hand this to Mr. Chriss if we
9 could --

10 **THE COURT:** Yeah, go ahead. It's a report regarding,
11 I guess -- was it Seagull Condominium and it was attached to an
12 email.

13 **MR. DENNIS:** Yes, your Honor.

14 **THE COURT:** And I guess the Defense is saying, look,
15 this report doesn't even regard your property. So how can that
16 be protected by the Work Product Doctrine?

17 **MR. CHRISS:** Because Ms. Allbritton is the manager at
18 Sandpiper and so presumably the reason why this was being
19 provided to CCMS by Ms. Allbritton is somehow for use with
20 respect to Sandpiper. And Hansen is one of Sandpiper's
21 engineering consultants and so that's the reason why this
22 appears to me to be communications between Ms. Allbritton and
23 other members of CCMS who were management personnel of
24 Sandpiper with respect to Sandpiper. Ms. Allbritton doesn't
25 work at Seagull. She only works at Sandpiper.

1 **THE COURT:** So how does that aid litigation or what
2 is that for or how? What's the connection?

3 **MR. CHRISS:** Well, since the Court has already
4 overruled my argument under Texas privilege, then with respect
5 to the report as it relates to Seagull, I don't particularly
6 care about the report because it relates to Seagull. So I
7 don't have a problem with the report if he apparently aren't
8 asking.

9 **THE COURT:** Okay. So we're good there? Was there
10 another part of the emails or --

11 **MR. DENNIS:** No, your Honor. It was all one --

12 **THE COURT:** Okay.

13 **MR. DENNIS:** -- it was all one document and as we
14 indicated again in our motion papers, there are approximately
15 1,000 emails on their privilege log and your Honor touched on
16 this earlier. So perhaps we've already resolved this issue is
17 that the privilege log just says, materials --

18 **MR. CHRISS:** I know. He just -- he's going to need
19 time to do that. Right?

20 **MR. DENNIS:** So then we've resolved that issue and
21 that's how we'll deal that.

22 **THE COURT:** Okay. Can we move on or is there
23 something else?

24 **MR. CHRISS:** I'm happy to move on --

25 **THE COURT:** Okay.

1 **MR. CHRISS:** -- and do my best to supplement my
2 privilege log during the period --

3 **THE COURT:** There was the motion to compel regarding
4 the reserves. So do you want to first --

5 **MR. CHRISS:** Yes, I have my motion to compel, your
6 Honor, yes.

7 **THE COURT:** So -- and there was a response. So if
8 you want to proceed on that, we can move to that.

9 **MR. CHRISS:** Yes, your Honor. We've cited to the
10 Court several cases that -- particularly in an extra-
11 contractual bad faith context where the allegation is -- and we
12 have specifically made this allegation in our Fourth Amended
13 Complaint where the allegation is that the insurance company
14 knowingly failed to settle the case when its liability was
15 reasonably -- or settled the claimant's liability was
16 reasonably clear.

17 There are several cases that hold that Plaintiff is
18 entitled to discover reserve information in that connection and
19 those -- we've cited to cases from the Federal District Courts
20 in Texas as well as Federal District Courts elsewhere. There's
21 no other way that I know of -- other than to browbeat a
22 confession out of somebody, there's no other way that I know of
23 to get evidence of the state of mind of the insurance company
24 with respect to what it knows its liability is than to get
25 their reserve information.

1 Reserve -- the Court well knows what reserves are.
2 If you have a billion-dollar liability and a 10-percent chance
3 of getting stuck with that liability, your reserve is a hundred
4 thousand dollars. If you've got a 10 million-dollar liability
5 and you're 90-percent sure that you're going to lose, that's a
6 9 million-dollar reserve.

7 Now, if I've got a case where the insurance company's
8 got a 9 million-dollar or a 10 million-dollar reserve and
9 they've only paid \$3 million, that's a case where they've
10 knowingly committed bad faith. They're withholding money that
11 they know belongs to my client. And the reserve information
12 maintained by the Defendant themselves is at the very least
13 relevant to that inquiry.

14 **THE COURT:** Okay. Mr. Dennis?

15 **MR. DENNIS:** Yes, your Honor. As we cited to the
16 Court, numerous cases involving bad faith claims of exactly
17 this type in which Courts rejected discovery of reserves as not
18 being relevant and the reason for that is this. Reserves are
19 not an admission of what is owed. A reserve is what you keep
20 on your books as an insurance company so that if you lose all
21 of your arguments and all of your issues, you actually have the
22 cash to be able to pay a judgment. That's what a reserve is.

23 And that was cited in the *Heights* (phonetic) case, a
24 bad faith case from the Western District of Washington.
25 *Mirachi* (phonetic), Third Circuit, another bad faith case,

1 allegations just like this one, reserves not relevant, not
2 discoverable because a reserve is not an admission. It's not
3 an admission that we owe you this much. It's not an admission
4 that, yeah, we calculated -- we did the calculations that
5 Mr. Chriss just stated.

6 A reserve is what is -- because you need to have the
7 money available to pay if you lose. The same thing in the *U.S.*
8 *Fire* case, Eastern District of Michigan 2012. *In Re: Couch*,
9 Central District of California, same thing, bad faith claim,
10 reserves not discoverable.

11 Moreover, in this case, there are particular reasons
12 why reserves are not relevant. Mr. Chriss just said, oh, well,
13 they reserved up what they owed. With regard to the
14 remediation costs, licensed consultant MKA met with Sandpiper's
15 contractor, the contractor that they selected, and they
16 hammered out the 4.2 million-dollar amount to be paid for the
17 remediation of the interior of the building. We hammered that
18 out with their contractor which they knew about at the time.

19 Another instance is that our consultants MKA met with
20 the Sandpiper's engineers with regard to the windows and the
21 doors and this is the declaration of Mr. Hooper at 72-1 -- PCF
22 72-1. As a result of that meeting, as referred to in the March
23 8th board meeting minutes that we just looked at, Sandpiper's
24 engineer said, yeah, we agree with MKA as to which windows were
25 damaged.

1 Now, whatever you might want to say about the general
2 case of reserves are this and reserves are that just because
3 there's a bad faith claim is not a valid argument and it's
4 particularly not valid in this case because many of these
5 issues were actually resolved with Sandpiper's own contractors
6 with Sandpiper's own knowledge.

7 Why do you need to know about the reserve for an
8 agreed-to amount of the contract? I don't understand that.

9 **THE COURT:** Okay. Final comments on that from the
10 Plaintiff. It's the Plaintiff's motion.

11 **MR. CHRISS:** Yeah. The reason I need to know that,
12 your Honor, is because I have alleged and I believe on
13 information and belief that when they went and hammered out
14 those things with our contractor, they knew they owed more
15 money. And, in fact, one of the cases that counsel himself has
16 cited, the *Aetna Casualty and Surety Company* case out of the
17 D.C. District court says, "A reserve essentially reflects an
18 assessment of the value of the claim taking into consideration
19 the likelihood of an adverse judgment."

20 **THE COURT:** The Court's going to grant --

21 **MR. CHRISS:** That's what a reserve is.

22 **THE COURT:** Yeah. The Court's going to grant the
23 motion to compel.

24 Okay. So we're going to move on from that motion and
25 I believe, Mr. Dennis, you had asked the Court if we could also

1 consider the number of depositions?

2 **MR. DENNIS:** Yes, your Honor.

3 **THE COURT:** And that's, I guess, not agreed to,
4 correct?

5 **MR. CHRISS:** Well, Judge, I think it -- what I would
6 suggest is this and this is my suggestion about this. I think
7 it's -- I don't think counsel can take 12 depositions between
8 now and the time the Court's going to rule on compelling
9 appraisal in this case and I don't think counsel can take 12
10 depositions before we mediate this case. And so I think it's
11 premature to decide how many depositions each side should take
12 in this case because I think what he's talking about is taking
13 12 depositions -- he's already taken, I think, what, five?

14 **MR. DENNIS:** We've taken four.

15 **THE COURT:** So you want 12 instead of 10?

16 **MR. DENNIS:** Yes, your Honor.

17 **THE COURT:** You want two more?

18 **MR. DENNIS:** That's all.

19 **MR. CHRISS:** Well, but he just wants two more plus
20 experts, as I understand it. So he wants -- he's basically
21 wanting to create a situation where he gets 20 depositions or
22 25, depending on how many experts I designate.

23 **MR. DENNIS:** Well, we're entitled to depose his
24 experts. If Mr. Chriss wants to designate 12 experts, which I
25 doubt -- but if he does, then we can depose more experts.

1 **THE COURT:** I don't really see -- I don't know how
2 long your depositions are but I'm not seeing a big difference
3 between 12 and 10. So I don't know when you-all are going to
4 do it. I think Mr. Chriss is probably right, like you probably
5 don't want to do them before the mediation. You probably can't
6 do them before the mediation but the Court will allow that.

7 There's one more thing I just want to clarify. I
8 know Mr. Chriss -- out of an abundance of caution, you had
9 responded to the Plaintiff -- Defendant's answer to the Fourth
10 Amended Complaint.

11 **MR. CHRISS:** I --

12 **THE COURT:** I didn't take that as a motion because
13 these will not pop up on the motions list. So --

14 **MR. CHRISS:** Okay.

15 **THE COURT:** -- we see them there and I've had to
16 address them before because we don't know. But -- so just as
17 long as Mr. Dennis knows that the affirmative defenses, the
18 complaint fails to state a claim upon which relief can be
19 granted. I mean, you actually have to file a motion to dismiss
20 with a lot more detail.

21 **MR. DENNIS:** Understood.

22 **THE COURT:** Yes. Okay.

23 **MR. CHRISS:** Well, then I will stop doing that, your
24 Honor.

25 **THE COURT:** No, no. I mean, it's -- you know, it's

1 been a problem.

2 **MR. CHRISS:** I'm just paranoid.

3 **THE COURT:** It has been a problem in the past. So I
4 just wanted to clarify that. I did not take that as a motion
5 to dismiss. So it'll have to be filed and beefed up a lot more
6 for the Court to consider that.

7 So what else is pending from the Plaintiffs?

8 **MR. CHRISS:** Nothing, your Honor. Oh, one other
9 thing. We were -- Counsel has mentioned that he had proposed a
10 couple of deposition dates on -- with respect to depositions
11 that I had asked to take before I demanded appraisal and I just
12 -- I don't want to take those depositions if the Court is going
13 to rule that that waives my right to appraisal. So I just want
14 to raise that because I'm happy --

15 **THE COURT:** Okay.

16 **MR. CHRISS:** -- to wait and take those depositions.
17 And that's probably what I'll do.

18 **THE COURT:** Well, what's the plan? If you-all are
19 going to try to, I think, within ten days to get back to Court
20 on who can mediate within what timeframe, are you-all really
21 going to push forward with more discovery in terms of
22 depositions or what are your thoughts?

23 **MR. DENNIS:** Well, your Honor, my thoughts are
24 probably not because we need to get some documents from the
25 Plaintiffs based on the rulings today and also some --

1 **THE COURT:** Okay. So no depositions. Go to
2 mediation first.

3 **MR. DENNIS:** So the only need -- there's -- we have
4 Friar scheduled for November the 6th.

5 **MR. CHRISS:** I mean, I'm prepared to take -- I don't
6 have a problem attending that deposition.

7 **THE COURT:** Okay. So Friar is fine. Anybody else?

8 **MR. CHRISS:** But I would stop after that for now.

9 **MR. DENNIS:** I can agree.

10 **THE COURT:** Okay. So just Friar for now.

11 What else? Anything from the Defense?

12 **MR. DENNIS:** Nothing, your Honor. Nothing today.

13 **THE COURT:** Okay. Then you-all will let the Court
14 know if I need to appoint a mediator?

15 **MR. CHRISS:** Yes, ma'am.

16 **THE COURT:** Thank you.

17 **MR. CHRISS:** Thank you.

18 **THE COURT:** You can be excused.

19 **MR. DENNIS:** Thank you, your Honor.

20 **(This proceeding ends at 4:33 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

November 3, 2019

Dated

TONI HUDSON, TRANSCRIBER